

REMARKS

The present Amendment is in response to the Official Action mailed December 13, 2007. Claims 1, 4, 32, and 35 have been amended, while claims 2, 3, 5, 12, 15-31, and 34 have either been canceled herein or previously canceled. Therefore, claims 1, 4, 6-11, 13, 14, 32, 33, and 35-40 remain currently pending in the present case. The following sets forth Applicant's remarks pertaining to the currently pending claims in the outstanding action.

As an initial matter, Applicant respectfully thanks the Examiner for taking the time on March 11, 2008, to conduct a telephone discussion with Applicant's undersigned counsel. In that discussion, the rejections of claims 1, 4-11, and 32-39 under 35 U.S.C. § 102(b) and claims 13, 14, and 40 under 35 U.S.C. § 103(a) in view of U.S. Patent No. 6,416,552 to Hoeppner *et al.* ("*Hoeppner*") were discussed. In particular, Applicant's undersigned counsel pointed out that while the *Hoeppner* reference is certainly pertinent to the present invention, differences exist between the two cases. First, *Hoeppner* teaches providing a seal member 220 for closing an aperture formed through an implant that allows access of the intermedullary canal, where the present invention provides for an orthopedic trial augment meant for engaging a different portion of the implant. Clearly, the intent of the two inventions is very different.

Furthermore, Applicant's undersigned counsel explained that the present invention structurally differs from that of *Hoeppner*. Specifically, *Hoeppner* teaches a plate 222 having an aperture formed therethrough, which can at least partially be blocked by latch members 224 and 228 which are biased with respect to one another. Members 224 and 228 are fit within and

guided by structures formed on plate 220. This is contrary to the present invention, which utilizes two blocks that only interact with one another and have a biasing element directly connected therewith.

It was ultimately agreed upon that amending independent claim 1 to include the limitations of dependent claim 5, and independent claim 32 to include the limitations of dependent claim 33, as well as amending both claims to require the direct biasing of the blocks with respect to one another, would move both such independent claims into a condition of allowance. Essentially, the limitations of the now canceled dependant claims required that one of the first or second blocks include a channel, and the other of the blocks include a complimentary surface. Applicant has amended independent claim 1 herein to require that the first block include at least one channel and the second block include at least one complimentary surface for at least partial reception in the at least one channel of the first block to provide for sliding movement between first and second blocks. This, in Applicant's opinion, is somewhat clearer than what was originally recited in dependent claim 5. Furthermore, as was also discussed in the aforementioned telephone interview, Applicant amended independent claim 1 to require that the expansion member be directly connected with the first and second blocks. As the Examiner indicated in the aforementioned telephone interview, this even further defines independent claim 1 over the *Hoeppner* reference, which does not teach such a configuration.

With regard to independent claim 32, Applicant notes that while it was agreed upon in the aforementioned telephone interview that dependent claim 33 be incorporated therein, in order to provide a different scope for the present invention,

Applicant has incorporated dependent claim 34 into independent claim 32. As amended, such claim requires that the second block be keyed to fit inside the first block to permit sliding movement between the two blocks in at least one direction. Furthermore, as was similarly done with respect to independent claim 1, independent claim 32 has also been amended to require that a spring element be directly engaging first and second blocks for moving the ends of the first and second blocks into biased engagement with the anterior-posterior ends of the cavity. As was discussed in the aforementioned telephone interview and explained above, this configuration is not taught by the *Hoepfner* reference. Even if Examiner relies upon element 222 of *Hoepfner* as being one of the first or second blocks and either element 224 or 228 as being the other of the first or second blocks, there is simply no direct engagement between the spring or biasing element and the two blocks. Rather, elements 224 and 228 of *Hoepfner* directly engage such an element, and such elements simply are not keyed to fit inside one another. *Hoepfner* therefore fails to anticipate or obviate either independent claims 1 or 32, as amended.

Thus, Applicant respectfully submits that independent claims 1 and 32 constitute allowable subject matter. Although each and every one of the remaining dependent claims are not specifically discussed herein, Applicant also notes that such claims constitute allowable subject matter based solely upon their proper dependence from independent claim 1, independent claim 32, or an intervening claim. In light of all of the above, Applicant respectfully requests allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable

reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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